IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2998 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

UMAR AHMED SAMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2998 of 1988

MR CH VORA for Petitioner No. 1

MR AJ DESAI AGP for Respondents No. 1,3

RULE SERVED for Respondent No. 2

MR HS MUNSHAW for Respondents No. 3,4

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 03/11/2001

C.A.V. JUDGEMENT

1. By this petition under Article 226 of the

Constitution, the petitioner has claimed the relief of absorption and permanency in the service of the respondent-District Panchayat with retrospective effect and all consequential benefits. There was an apprehension of his service being terminated at the time of filing of the petition and hence an order restraining the respondent authorities from terminating his service was also prayed by way of interim relief. While admitting the petition in the year 1988, interim relief was refused with the clarification that the respondents shall not invoke the device of artificial break in service for the purpose of termination but, at the same time, the respondents were expressly permitted to terminate the service of the petitioner on any lawful ground in any lawful manner.

2. The short facts of the petition are that the petitioner was appointed as a work charge driver in the pay scale of Rs.260-400 on temporary basis and for a period of 29 days by order dated 20.5.1983. Since the joining of the service under the said order, he continuously served under the respondent District Panchayat without any interruption with an artificial break of a day every month. Over the years, the difference between the pay and allowance paid to the petitioner and those paid to the permanent employees doing the same job went on increasing. Hence, the demand for equal pay for equal work and absorption on permanent basis with consequential benefits. From the affidavit-in-reply filed on behalf of the respondent No.4 under whom the petitioner appears to have served in the year 1983, it appears that the petitioner was given a fresh appointment on the post of a driver specifying in the order dated 1.2.1988 that the employment was restricted to scarcity relief work. It was contended on that basis that the petitioner was never appointed on a permanent or a sanctioned post which would otherwise be required to be filled up by the Panchayat Services Selection Board. Thus, although the respondents Nos.1 to 3 have never filed any reply, the sum and substance of the defence is that the petitioner was never regularly recruited; that he worked under different departments; that his employment at the time of filing of the petition was restricted to scarcity relief work and that he was allowed to continue in service due to the order of the interim relief initially made in this petition.

3. Apart from the demands and dispute as above, there was a consensus that the petitioner has continued to serve as a driver all throughout the period of his service since 1983 and has, by now, completed more than

15 years of service. It is also pointed out that the petitioner is given the benefit of the Government Resolution dated 17.10.1988 and, accordingly, he is also paid the amounts of the pay scale for the post of driver but no increments were released due to audit objections. The learned counsel for the petitioner fairly conceded that the petitioner was not appointed or ever recruited through a regular process of recruitment and his grievance at present was restricted to the denial of increments and/or other benefits accruing under the Government Resolution dated 17.10.1988. It could be culled out from the rival submissions that, for the purpose of application of the Resolution dated 17.10.1988, the date of entry in the service considered by the respondent authority was 1.2.1988 whereas the petitioner was in continuous employment under the respondent since 20.5.1983. The contention of the respondent in this behalf was that the petitioner's service since 1983 had come to be terminated in terms of the 29 days' appointment orders on 30.1.1988. Thereafter, since the petitioner was jobless and upon his applying for job, he was provided with work with effect from 1.2.1988 under a fresh order of appointment. The question whether there was a clear break in service is of no relevance or importance, as the condition for grant of benefits under the Resolution dated 17.10.1988 is that the employee must have completed 5, 10 or 15 years of service, as the case may be, where the completed years of service would have the same meaning as assigned to it under Section 25-B of the Industrial Disputes Act, 1947. There is no dispute about the fact that the petitioner had actually worked for more than 240 days in each year of his service since his appointment in 1983. It can also not be gainsaid that the petitioner served under one or other departments of the same District Panchayat. It is also clarified by the Government that the benefit of the aforesaid Resolution shall accrue as and when the workman concerned completes 5, 10 or 15 years of continuous service.

4. In the above facts and circumstances, the restricted prayer for full and proper implementation of the Resolution dated 17.10.1988 has to be granted. Accordingly, the petition is partly allowed and the respondents are directed to re-determine the wages and the benefits due to the petitioner on the basis of his entry into service from 20.5.1983 and pay him the arrears of difference in accordance with the Resolution dated 17.10.1988. The current regular wages and other benefits shall also have to be refixed accordingly. In view of the prolonged pendency of this petition, the respondents

are ordered to carry out the aforesaid directions within two months of receipt of a certified copy of the writ. Rule is accordingly made absolute with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)